IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6152 of 2001
with
CIVIL APPLICATION NO. 9255 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

INDOCOUNT CHNGANAM EMPLOYEES UNION

Versus

REGISTRAR BOMBAY INDUSTRIAL RELATIONS

Appearance:

1. Special Civil Application No. 6152 of 2001

MR. K.S. NANAVATI, SR. COUNSEL WITH MR. K.D. GANDHI, ADVOCATE, for Petitioner No. 1
MS. NANDINI JOSHI, AGP, for respondent No. 1
MR DS VASAVADA for Respondent No. 2
MR RD DAVE for Respondent No. 3

2. Civil Application No. 9255 of 2001

MR. B.T. RAO, Advocate, for the applicant
MR. D.S. VASAVADA for respondent No. 2
MS. NANDINI JOSHI, AGP, for respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 14/2/2002

C.A.V. JUDGEMENT

1. Indocount Chuganam Employees' Union-petitioner has filed this petition challenging an interim order dated 23.7.2001 passed by the Industrial Court, Vadodara, in Review (IC) Application No. 6 of 2001. In this case Majur Mahajan Mandal, respondent No. 2, filed a review application and sought review of the interim order dated 18.5.2001 passed by the Industrial Court, Vadodara, dismissing the interim application dated 10.4.2001 below Exh. 2 filed by respondent No. 2. Respondent No. 2 Union had inter alia prayed to restrain the petitioner from entering into or registering any type of settlement till the main Appeal (IC) No. 1 is heard. The main Appeal IC No. 1/2001 is filed by respondent No. 2 Union inter alia challenging the recognition and registration granted to the petitioner Union under the provisions of Bombay Industrial Relations Act, 1946.

2. The Industrial Court by its impugned order dated 23.7.2001 passed the following directions:

(i) The review application of respondent No. 2 is allowed.

(ii) Till the disposal of the Appeal, the petitioner and respondent No. 2 are restrained from entering into any settlement, agreement or understanding with the management.

(iii) The order dated 19.3.2001 passed by respondent No. 1 granting recognition and registration to the petitioner in respect of Karjan Taluka for Textile Industries is stayed.

(iv) Directing respondent No. 1 to make an inquiry on an application made by respondent No. 2 and to give a report within 45 days before the Industrial Court in appeal (IC) No. 1 of 2001.

(v) The party to the proceedings are directed to cooperate with respondent No. 1 in order to complete spot inquiry and to be ready for hearing after the report is submitted before the Industrial Court.

3. The facts giving rise to this petition are as

under:

3.1 The petitioner is a Union having members of the persons working with a Company known as Indocount Chunganam Textile Limited engaged in the activity of processing clothes and yarn at Karjan. Approximately 700 persons are working with the said Company.

3.2 It has been alleged in the petition that in the month of March 2000, April 2000 and May 2000, the petitioner was having membership of more than 25% of the total workers working in Textile Industry situated in Karjan Taluka Area. In view of the said fact the petitioner made an application dated 5/6/2001 before respondent No. 1 in the prescribed form under the provisions of the BIR Act inter alia praying for registration as a representative Union of Textile Industry situated in the said local area i.e. Karjan Taluka area. It is the case of the petitioner that the petitioner Union has fulfilled all the conditions of the provisions of Section 13 of Bombay Industrial Relations Act (hereinafter referred to as `the Act') and was entitled to registration as a representative Union.

3.3 Respondent No. 1 after conducting spot inquiry and taking the statement of the workers at the concerned place as envisaged under Rule 28A of the Rules of the BIR Rules, found that the petitioner Union was having a membership of not less than 25% of the total number of employees employed in Textile Industry situated at Karjan Taluka area. Respondent No. 1 after considering the said aspect has granted registration to the petitioner as a representative Union vide order dated 19.3.2001.

3.4 Being aggrieved against the order dated 19.3.2001 respondent No. 2 filed appeal before the Industrial Court, Vadodara. Respondent No. 2 also filed an application Exh. 2 dated 10.4.2001 inter alia praying for interim relief restraining petitioner as a representative Union from entering into any settlement or agreement. On the said application, the Industrial Court vide order dated 10.4.2001 was pleased to grant interim relief in terms of para 3(A) and (B) of the interim application. Ad-interim order was passed on 10.4.2001.

3.5 On issuance of the notice by the Industrial Court the petitioner filed a detailed reply pointing out that the petitioner has complied with all the conditions under Section 13 of the Act and therefore entitled for registration. Respondent No. 1 filed reply dated 26.4.2001 from which it is evident that respondent No. 1

had conducted on the spot inquiry on 7.3.2001 and 8.3.2001 and had taken statement of the workers from which it was found that the petitioner was having a membership of not less than 25% of a total number of employees employed in the Textile Industry situated at Karjan Taluka area. The petitioner has annexed a copy of the reply dated 26.4.2001 together with list of documents filed by respondent No. 1.

3.6 After considering the material on record and hearing the parties the Industrial Court, Vadodara, vide order dated 18.5.2001 was pleased to vacate ad-interim relief granted earlier and dismissed application Exh. 2 inter alia praying for interim relief.

3.7 Being aggrieved and dissatisfied with the aforesaid order, respondent No. 2 filed a review application being No. 1/2001 inter alia praying to review the order dated 18.5.2001 on the ground that under Section 14 of the Act, respondent No. 1 will have to decide the majority amongst two unions who have applied for registration as a representative Union. The respondent No. 2 Union filed an application mainly relying on the decision rendered by the Bombay High Court reported in (1959) II LLJ at page 493 in the case of B.E.S.T. WORKERS' UNION VS. STATE OF BOMBAY AND OTHERS. The petitioner as well as respondent No. 1 filed their replies opposing the review application filed by respondent No. 2.

3.8 The Industrial Court, Vadodara, relying upon the aforesaid decision of the Bombay High Court, allowed the Review Application vide order dated 23.7.2001 and gave various directions, which I have set out in the earlier portion of the order.

3.9 Being aggrieved and dissatisfied with the aforesaid order, the petitioner has filed the present petition before this court on 30.7.2001. When the matter was placed for hearing before this court (Coram: R.R. Tripathi, J), the court passed the following order dated 6.8.2001.

> "Mr. D.S. Vasavada, learned advocate for the respondent No. 2, submits that if the petitioner-union is permitted to sign the agreement, then, it would amount to allowing the petition at the admission stage itself. To see that the workman get the higher payment tomorrow itself, it is directed that respondent No. 3 shall release the higher payment, which is agreed

upon under the agreement referred to hereinabove. The same will however be subject to further order/s which may be passed by this court on 9.8.2001. S.O. to 9.8.2001. Direct service is permitted."

4. Mr. K.S. Nanavati, learned Sr. counsel has appeared on behalf of the petitioner Union. On behalf of respondent No. 1 Ms. Nandini Joshi, learned AGP, appeared. For respondent No. 2 Mr. D.S. Vasavada, learned advocate, appeared and on behalf of respondent No. 3 Mr. Rajesh Dave, learned advocate, appeared.

5. The learned counsel for the petitioner has invited my attention to certain provisions of the Bombay Industrial Relations Act. This Act has been passed to regulate the relations of employers and the employees, to make provision for settlement of industrial disputes and to provide for certain other purposes. This Act has also been enacted to provide for the regulation of relations of employers and employees in certain matters, to consolidate and amend the law relating to the settlement of industrial disputes and to provide for certain other purposes.

5.1 Section 3 of the Act provides for definitions. Section 3(2) of the Act provides for definition of `approved union' which means a union on approved list. Section 3(9) of the Act provides for the term `Commissioner of Labour' which means an officer appointed by the State Government for the time being to be the Commissioner of Labour and in respect of any of the powers and duties of the Commissioner of Labour that ay be conferred and imposed on any person.

5.2 Section 3(13) of the Act provides for definition of `employee' which means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual supervisory, technical or clerical work for hire or reward.

5.3 Section 3(14) of the Act provides for the term `employer'. Section 3(25) of the Act provides for the term ``Member' which means a person who is an ordinary member of a union and who has paid a subscription of not less than twenty five paise per calendar month. Section 3(28) defines the term `primary union' as a union for the time being registered as Primary Union under this Act; Section 3(29) provides for `qualified union' which means a union for the time being registered as Qualified Union

under this Act; Section 3(30) of the Act provides for `registered Union' which means a union registered under this Act. Section 3(31) of the Act defines the term `Registrar' as a person for the time being appointed to be the Registrar of Unions under this Act and includes an Additional Registrar and in respect of such powers and duties of the Registrar may be conferred and imposed on him, an Assistant Registrar of Unions. Section 3(32) of the Act defines `representative of employees' so as to mean a representative of employees entitled to appear or act as such under Section 30; Section 3(33) of the Act provides for `representative union' which means a union for the time being registered as a Representative Union under the Act.

5.4 Section 4 of the Act provides for the term `Commissioner of Labour' which means that the State Government shall by notification in the Official Gazette, appoint a person to be Commissioner of Labour. Section 5 of the Act provides for the Registrar and Assistant Registrars. Section 6 of the Act provides for the term `Conciliator' and Section 7 of the Act provides for Board of Conciliation. Section 8 of the Act provides for Labour Officers and Assistant Labour Officer. Section 9 of the Act provides for Labour court and Section 10 of the Act provides for Industrial Court.

5.5 Chapter III of the Act provides for registration of Unions. Section 11 of the Act provides for recognition of undertakings and occupations. Section 12 of the Act provides for maintenance of registers and approved list. Section 13 of the Act provides for application for registration. Section 13 reads as under:

"Section 13(1) - Any union which has for the whole of the period of (three calendar months immediately preceding the calendar month in which it so applies) under this Section a membership of not less than twenty five per cent of the total number of employees employed in any industry in any local area may apply in the prescribed form to the Registrar for registration as a Representative Union for such industry in such local area.

Section 13(2) - If in any local area no Representative Union has been registered in respect of an industry a union which has for the whole of the period of three calendar months immediately preceding the calendar months in which it so applies under this Section a

membership of not less than five per cent of the total number of employees in such industry in the said area may apply in the prescribed form to the Registrar for registration as a Qualified Union for such industry in such local area.

Section 13(3) - If in any local area, neither a Representative Union nor a Qualified Union has been registered in respect of an industry, a union having a membership of not less than fifteen percent of the total number of employees employed in any undertaking in such industry in the said area and complying with the conditions specified in Section 23 as necessary for its being placed on the approved list may apply in the prescribed form to the Registrar for registration as a Primary Union for such industry in such local area.

Section 13(4) - Notwithstanding anything contained in this Section, if a union makes a fresh application for registration as a Representative Union, Qualified Union or as the case may be, Primary Union, the Registrar shall not entertain such application unless a period of one year has elapsed since the date of disposal by the Registrar of the previous application of that union for such registration."

5.6 Section 14 of the Act provides for registration of Union. Section 14 of the Act which was subject matter of the decision of the Bombay High Court in the case of Best Workers Union (supra) and the third proviso (prior to its amendment) was as under:

"Section 14 of the BIR Act reads as under:

Registration of Union - On receipt of an application from a union for registration under Section 13 and on payment of the fee prescribed, the Registrar shall, if after holding such inquiry as he deems fit he comes to the conclusion that the conditions requisite for registration specified in the said section are satisfied and that the union is not otherwise disqualified for registration, enter the name of the union in the appropriate register maintained under Section 12 and issue a certificate of registration in such form as may be prescribed.

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Third proviso (under the old Act) - Thirdly that where two or more Unions fulfilling the conditions necessary for registration apply for registration in respect of the same industry in any local area, subject to the provisions of proviso 2, the Union having the largest membership of employees employed in the industry shall be registered."

5.6A Even after amendment, main part of Section 14 of the BIR Act remained the same. So I do not quote the same again. However, third proviso to Section 14 of the BIR Act was amended by Guj. Act 8 of 1962 S. 4. The third proviso (after amendment) reads thus:

Thirdly that -

(i) Where two or more unions fulfilling the conditions necessary for registration apply in the same calendar month for registration in respect of the industry in any local area in the same calendar month subject to the provisions of the second proviso the union having the largest membership of employees employed in the industry (for a period of three months immediately preceding the calendar month in which they apply) during the whole of the period of three calendar immediately preceding that in which the application were made shall be registered (and no applications for registration received in any subsequent calendar month are disposed of by the Registrar) and any application made in any subsequent calendar month shall not be considered by the Registrar until the applications made in the earlier calendar month are disposed of by him.

(ii) where a union fulfilling the conditions necessary for registration make an application during any calendar month for registration in respect of an industry in any local area any application in any subsequent calendar month by any other union for registration in respect of the same industry shall not be considered by the Registrar until the former application is disposed of by him."

5.7 Section 119D of the Act provides for power of

Industrial Court etc. to pass interim orders. Section 123 of the Act provides for powers to make rules.

5.8 Under the said section the Legislature has enacted Rules which are called as Bombay Industrial Relations (Gujarat) Rules, 1961. In the said Rule, Rules 28A (1) and (2) read as under:

> "Section 28-A (1) - For ascertaining the membership of unions for the purposes of the provisions of Sections 13, 16, 17 or 23, the Registrar shall hold an inquiry in the manner hereafter provided.
>
> (2) - The Registrar shall fix a date for holding an inquiry for ascertaining such membership and shall give fifteen days notice thereof to the union or unions concerned."

5.9 The learned counsel for the petitioner has submitted that in the impugned order the Industrial Court has mainly relied on the Division Bench judgement of the Bombay High Court in the case of B.E.S.T. WORKERS' UNION VS. STATE OF BOMBAY AND OTHERS (supra). The Bombay High Court relying upon the old provision of Section 14 of the Act, has on page No. 499 held thus:

> "In our opinion, this provision, instead of assisting Mr. Joshi, assists the appellant union. It is evident from this provision that where the legislature thought it fit to require the membership to be determined as it stood on the date of the application for registration, it has done so in clear terms. It was indeed necessary to enact such a provision in Sub-sec. (3), because under this provision a union making an application for being registered in place of an existing union, makes certain claims based on its strength. For considering such a claim, it is but appropriate that its strength as it obtained on the date on which it lodged that claim should be considered in preference to its strength on any other occasion."

The Court again held on page 499-500 as under:

> "Finally, it was said that upon the view which we take as to the point of time with reference to which the relative strength is to be determined, a practical difficulty will be created, and the

> Registrar would not be able to dispose of the applications for registration expeditiously. It may be that a certain amount of delay would be caused because the Registrar may have to examine the claims of several unions. But that is not a ground or reason for refusing to construe the provisions of the Act according to the language used by the legislature. It is not as if it will be impossible for the Registrar to perform his duties. Where a construction placed on a provision were to result in such an impossibility, then, of course, that construction would not be proper, and the Court would be precluded fro putting such construction. Merely because the construction would create difficulties, that construction, if it is otherwise justifiable, cannot be rejected.
>
> We accordingly hold that the Registrar is bound to consider the application of the appellant before he makes any final orders disposing of the application made by respondent 3, that is to say, before he decides to register respondent 3 union."

5.10 The learned counsel for the petitioner submitted that it is no doubt true that the above decision has been decided on 5.2.1959 by the Bombay High Court which is binding on me. The learned counsel for the petitioner however stated that proviso to Section 14 of the Act, particularly, third proviso which has been relied upon by the Bombay High Court has been subsequently amended by the Gujarat Act No. VIII of 1962 which I have already quoted when I quoted the main provision of Section 14. I have also referred to the old third proviso to Section 14 of the Act in this behalf.

5.11 In view of the aforesaid submissions, the learned counsel for the petitioner submitted that in view of the amended proviso `thirdly' to Section 14, the judgement of the Bombay High Court relied upon by the Industrial Court loses its effect as binding precedent and hence same cannot be relied upon by the Tribunal. The same is not holding the field and Industrial Court was not justified in relying on the same.

5.12 The learned counsel for the petitioner has stated that in this case the petitioner has made an application on 5.6.2000 whereas respondent No. 2 has not made any application in the same calendar month in which the

petitioner Union had made. After a period of six months respondent No. 2 made an application on 29.1.2001 i.e. subsequent to the calendar month in which the petitioner made. Therefore on the undisputed facts of the case application of respondent No. 2 cannot be considered by respondent No. 1.

5.13 The learned counsel for the petitioner submitted that on merits the petitioner Union had for the whole period of three calendar months immediately preceding the calendar month in which it had applied i.e. on 5.6.2000 a membership not less than 25% of the total number of employees employed in Textile Industry situated at Karjan Taluka area.

5.14 The learned counsel for the petitioner submitted that it is an admitted fact that at the time when order dated 19.3.2001 was passed by respondent No. 1, respondent No. 2 was not a party to the proceedings before the Registrar and had, therefore, no right to file an appeal and the order passed in such an appeal is illegal, nullity and without jurisdiction. It was further submitted that the Registrar has passed order under Section 13 of the Act after holding a spot inquiry and after recording the statements of the workers at the concerned place as envisaged under Rule 28A of the Rules and found that the petitioner was having a membership of not less than 25% of the total number of employees employed in the Textile Industry situated at Karjan Taluka area. Therefore, it is incorrect on the part of respondent No. 2 to contend that the Registrar had not followed the procedure.

5.15 The learned counsel for the petitioner further submitted that the Registrar did not issue notice to respondent No. 2 because respondent No. 2 was not a party to the proceedings before the Registrar and has not made application in the same calendar month in which the petitioner made the application and therefore it was not entitled to any notice.

6. On the other hand, Mr. Vasavada learned counsel for respondent No. 2 has raised the following preliminary contentions.

6.1 The learned counsel submitted that in this case the petitioner has challenged the order of the Tribunal dated 23.7.2001 which is the interim order in Review (IC) Application No. 6 of 2001. So the present petition is not maintainable. He has relied on the judgement of the Hon'ble Supreme Court in the case of NATIONAL COUNCIL FOR CEMENT & BUILDING MATERIALS VS. STATE OF HARYANA AND

OTHERS reported in (1996) 3 SCC 206 where the Hon'ble Supreme Court at para 16 on page 210 has observed thus:

> "The facts in the instant case indicate that the appellant adopted the old tactics of raising a preliminary dispute so as to prolong the adjudication of industrial dispute on merits. It raised the question whether its activities constituted an `industry' within the meaning of the Industrial Disputes Act and succeeded in getting a preliminary issue framed on that question. The Tribunal was wiser. It first passed an order that it would be heard as a preliminary issue, but subsequently, by change of mind, and we think rightly, it decided to hear the issue along with other issues on merits at a later stage of the proceedings. It was at this stage that the High Court was approached by the appellant with the grievance that the Industrial Tribunal, having once decided to hear the matter as a preliminary issue, could not change its mind and decide to hear that issue along with other issues on merits. The High Court rightly refused to intervene in the proceedings pending before the Industrial Tribunal at an interlocutory stage and dismissed the petition filed under Article 226 of the Constitution. The decision of the High Court is fully in consonance with the law laid down by this Court in its various decisions referred to above and we do not see any occasion to interfere with the order passed by the High Court. The appeal is dismissed but without any order as to costs."

6.2 On the merits of the matter learned counsel for respondent No. 2 has also relied on the affidavit in reply filed by Bachubhai D. Patel, dated 6.8.2001 and also further affidavit dated 6.8.2001 filed on behalf of respondent No. 2. Relying on the aforesaid affidavits the learned counsel for respondent No. 2 stated that a specific submission has been made in the affidavit in reply that Company was recognised under Section 11 of the Act for the first time on 10.8.2000. The present petitioner has filed an application under Section 13 of the Act on 5.6.2000 when it was made clear that the Company is a Cotton Textile. That an application under Section 13 for being registered as representative union in Cotton Textile Industry in local area notified can be filed only after 10.8.2000 and therefore any application filed before that should be treated as pre-matured and deserves to be rejected. The Registrar has not taken

into consideration this aspect.

6.3 The learned counsel for respondent No. 2 has further submitted that the Registrar has to hold an inquiry as contemplated under Rule 28A of the Rules and if the Registrar holds any inquiry, namely spot inquiry as alleged by the petitioner then the same is not prescribed under the said Rule 28A or the same is alien to the statute and the same cannot be spelt out by the Registrar. He submitted that the procedure prescribed under Rule 28A is mandatory and mandatory provision cannot be flouted by the Registrar of the Industrial Court. In support of this contention the learned counsel for respondent No. 2 has relied on the judgement of the Hon'ble Supreme court in the case of AUTOMOBILE PRODUCTS OF INDIA EMPLOYEES' UNION VS. ASSOCIATION OF ENGINEERING WORKS, BOMBAY reported in AIR 1990 SC 1159 particularly paras 9, 10 and 12 which read thus:-

"Para 9 - It is thus clear that the recognition or derecognition of a union under the Act is not a matter which concerns only the contesting unions or its members. It is a matter of utmost importance to the interests of all the workmen in the undertaking concerned and to the industry and society in general. No union is entitled to be registered as a recognised union under the Act merely because it satisfies the membership qualification. The Industrial Court is forbidden from granting recognition to a union whatever its membership, if the Court is satisfied that it is disqualified for reasons mentioned under Section 12(5) and 12(6) or does not satisfy the conditions mentioned in Section 19. A period of two years must further have elapsed since the registration of the recognised union, if there is one, before an application for recognition of a new union is entertained. A union whose recognition is cancelled on the ground specified in clause (ii) of Section 13 cannot make a fresh application for a period of three months, and if it's recognition is cancelled on any other ground it cannot make a fresh application for recognition for a period of one year from the date of the cancellation in the latter case without the permission of the Court. In addition to the membership qualification, therefore, the Court has also to satisfy itself that the applicant union is not disentitled to recognition or to apply for recognition, under the other provisions of the Act.

Para 10 - As regards the membership qualification itself, the Act enjoins that for being recognised, the applicant-union must have firstly a membership of a minimum of 30 per cent of the employees of the undertaking for the whole of the period of at least six calendar months preceding the month in which the application for recognition is made. When the applicant-union seeks recognition for itself by displacing the existing recognised union, the applicant-union has, in addition, to satisfy that not only it had 30 per cent of the membership during the six calendar months immediately preceding the calendar month in which it made its application, but had also a larger membership during the said period than the membership of the recognised union. Even with regard to membership, therefore, what has to be satisfied by the concerned union is not only its minimum qualifying membership but also its competing superiority in it over a continuous specified period. What should further be not lost sight of is the paramount fact that it is the membership of the workmen of the union over a period vouched by the relevant documents and not their vote on a particular day which under the Act gives the Union its representative character. It is its representative character determined by such membership that gives a union a right to make the application for recognition. However overwhelming therefore the vote may be in its favour in a ballot, it will not entitle a union to recognition under the Act. The recognition by ballot or by any method other than that laid down in the Act is, therefore, alien to the Act.

Para 12 - The consent of the parties to follow a procedure which is against the mandatory provisions of the Act, cannot cure the illegality. For reasons which we have indicated earlier the legislature did not opt for the ballot as a method for determining the representative character of the union and laid down an elaborate procedure with necessary safeguards, to do so. In the circumstances, to permit the parties by consent to substitute a procedure of their own is in effect to permit them to substitute the provisions of the Act."

6.3A He has also relied on the Division Bench judgement of this court in the case of MILL MAZDOOR SABHA VS. ASSISTANT REGISTRAR OF TRADE UNION in LPA No. 698 of 1997 delivered on 30.9.1999 (Coram: S.D. Dave and C.K. Buch, JJ). The Division Bench considered the provisions of the Act and the Rules and also the judgment of the Hon'ble Supreme Court in the case of AUTOMOBILE PRODUCTS OF INDIA EMPLOYEES' UNION (supra) and on internal page 16 the Court has held as under:-

"The above said provisions would go to show that after the receipt of the application from a Union for registration under the provisions contained in Section 13 of the Act, on the payment of requisite or prescribed fees the Registrar shall after holding such inquiry and coming to the necessary conclusion enter the name of the Union in the appropriate Register maintained under Section 12 and issue a certificate of registration. Any how, proviso first provides that, in any local area there shall not at any time be more than one registered union in respect of the same industry. Proviso Thirdly (i) which is relevant and important for the decision of the controversy makes it clear that, where two or more unions fulfilling the conditions necessary for registration apply in the same calendar month for registration in respect of the same industry, in any local area, the union having the largest membership of employees employed in the industry during whole of the period of three calendar months immediately preceding that in which the applications were made shall be registered, and any application made in any subsequent calendar months shall not be considered by the Registrar until the applications made in the earlier calendar months are disposed of by him.

Proviso thirdly therefore would make it clear that the petitioner union before the learned Single Judge namely the Reliance & Other Mills Workers Union could not have urged successfully that even in the facts and circumstances of the case which were found to be `peculiar in nature' there could have been the consideration of the application for the registration by the petitioner union irrespective of the fact that the applications made by other unions prior to such application were pending for consideration."

6.3B In paragraph 14 on page 20 again the Court has

held as follows:

"The upshot of the aforesaid adjudication is that this Special Civil Application succeeds in part. The respondent No. 1 is directed:

(1) to take up the petitioner-Union's application dated 30.4.96 under S. 13(3) of the BIR Act for consideration in the light of the observations made in this judgment and the same may be decided in accordance with law, within a period of one month from the date the certified copy of this order is served upon him;

(2) As a result of the consideration of this application dated 30.4.96 under S. 13(3), even if the petitioner-Union is registered as a Primary Union under S. 13(3), such registration would remain effective until the earlier applications moved by the respective parties on 31.8.95 and subsequently are considered and decided as and when the Registrar is able to decide those applications.

(3) Even if the petitioner-Union is registered as a Primary Union under S. 13(3) as a result of the consideration of the application dated 30.4.96, such registration would not come in the way of the Registration of any other Union including the petitioner-Union, if they are otherwise entitled to be registered as Representative Union under S. 13(1) and moment any other Union of the petitioner-Union itself is registered as Representative Union under S. 13(1), the Registration of the petitioner-Union under S. 13(3) as a Primary Union would come to an end on the principle that there can be only one Registered Union at a time."

It appears very clearly that, looking to the Scheme of the Act, the application of the Respondent No. 2 Union could have and should have been considered in consonance with the provisions contained in Section 13, 14 and 31 of the BIR Act, 1964. While following the procedure as laid down under the above said provisions of the Act of 1946, the authority concerned was required to act as per the provisions of the Rule 28A of the Bombay Industrial Relations (Gujarat) Rules, 1961."

6.4 The learned counsel for respondent No. 2 therefore submitted that the Industrial Court has prima facie come to the conclusion that even on the number of affidavits which are produced the petitioner union does not have the requisite membership of 25% for three calendar months. In the present case the application itself was premature as submitted earlier because the industry was recognised as Cotton Textile undertaking for the first time on 10.8.2000. Even on the criteria of membership as defined under Section 3(25) of the Act the petitioner Union does not have membership of 25%. This aspect is required to be examined and verified by the Registrar strictly as per the provisions of the Act, namely as per the definition of the member in Section 3(25) and also as per the provisions of Section 13 and Rule 28A.

6.5 Learned counsel for respondent No. 2 has further submitted that the interpretation of Section 14 of the Act is not correctly put by the petitioner. Section 14 requires that the application which is made first in the point of time is to be considered first and the application which is made subsequently is to be considered second. However it is pertinent to note that while considering the application, the Registrar is required to even call for and cause all the documents to be produced as specified in Rule 28A and is required to follow procedure as required under Rule 28A as held by the Hon'ble Supreme Court and the Division Bench of this Court. The Registrar is also required to see whether any application of other union claiming the same status is pending or not? In the present case the Registrar has not verified all the aspects, namely, (1) whether the application is premature or not? (2) Whether the applicant union (petitioner union) is having the membership of 25% or not? (3) Whether the applicant union is bona fide conducted or not? In the submission of respondent No. 2 the applicant union has no audited accounts, has not produced any document and has not even issued notice to respondent No. 2 for raising the valid objection. The learned counsel for respondent No. 2 has submitted that the constitution of the union also provides that they can enrol the members only qua Indo Company Ltd. Such a union cannot be registered because they cannot apply for being registered as representative union because the constitution itself does not permit the employees of the other unit to be enrolled as member. This is the basic flow in the constitution itself. All these objections have to be considered by the Registrar. As the mandatory provision under Rule 28A is violated then in that case respondent No. 2 could raise these

objections also. However since mandatory provisions have been flouted the order passed by the Registrar is required to be set aside.

6.6 Learned counsel for the respondent has further submitted that the correct interpretation of Section 14 is that the Registrar is also required to consider and give registration to the union which is having larger membership. The preamble of Section 14 is itself explanatory. In the present case if the interpretation given by the petitioner is taken as correct then it will lead to chaos and the minority union having membership of less than 25% will be registered and the union which is having a ostensible membership will be registered as representative union. Therefore consideration may take place as provided in Section 14 of the Act but registration has to be given to the applicant union which is having larger membership. It can be established in the present case that the petitioner has less than 25% membership whereas respondent No. 2 union has during the relevant period more than 55% membership. If the interpretation put by the petitioner union is accepted then the union having less than 25% membership will be registered as representative union and the union which has followed the procedure of the Act and has also completed all modalities as per the statute will not be registered for its having more than 50% membership. This is not the scheme of the Act and the Registrar was duty bound to follow all these mandatory provisions and as submitted earlier the order passed by the Industrial Court is just, legal and proper and therefore deserves to be sustained and the matters should be remanded with a specific direction to the Registrar to complete the procedure strictly as per the provisions of the Act and Rules and as per the guidelines issued by the Hon'ble Supreme Court as well as the Division Bench of this Court.

7. Ms. Nandini Joshi, learned AGP for respondent No. 1 has invited my attention to the communication of the Assistant Registrar dated 10.8.2001 in which it has been stated that respondent No. 3 Company has been registered since 10.8.2000. She has also tried to support the order of the Tribunal in this behalf. She has also tried to support the contention of Mr. Vasavada in this behalf.

8. I have considered the submissions made by the learned counsel for the petitioners, provisions of the Bombay Industrial Relations Act, Rules, judgement of the Bombay High Court passed in the case of Best Workers

Union (supra) and also the judgement of the Hon'ble Supreme Court in the case of NATIONAL COUNCIL FOR CEMENT & BUILDING MATERIALS (supra). I have considered the interim order passed by the Industrial Court dated 23.7.2001 in this behalf. Though this matter was keenly contested, in view of the fact that this being an interim order and in view of the judgement of the Hon'ble Supreme Court in the case of NATIONAL COUNCIL FOR CEMENT AND BUILDING MATERIALS (supra) and in view of the fact that the petition raises disputed question of fact which only the Registrar can decide after ascertaining the correct facts, I am of the view that, without expressing my opinion on the merits of the matter, the Industrial Court is an appropriate authority which can decide the questions raised in this petition. As the proceedings are pending before the Industrial Court, I refuse to interfere at the interlocutory stage and I reject the petition filed under Article 226 of the Constitution of India at this stage. However, I direct the Industrial Court to consider the facts set out by the learned counsel for the petitioner as well as the learned counsel for respondent No. 2 and also the contentions and the decisions cited by the learned counsel for the petitioner as well as the learned counsel for respondent No. 2. After considering the the submissions by both the learned counsel for the parties, I direct the Industrial Court to decide the Review Application filed by Majur Mahajan Mandal by which they want to review the interim order dated 18.5.2001 passed by the Industrial Court, Vadodara. The Industrial Court will not be influenced by any of the observations made by this Court and decide the Review Application in accordance with law.

9. In the result the matter is remanded to the Industrial Court to decide the same in accordance with law. The Registry is directed to send Record and Proceedings forthwith to the Industrial Court concerned. This petition is rejected accordingly with no order as to costs.

10. In the Civil Application, I have heard Mr. B.T. Rao, learned advocate for the applicant. In view of the order passed in the main matter i.e. Special Civil Application No. 6152/2001, this Civil Application does not survive. Hence the same is also rejected.

(K.M. MEHTA, J)

(pkn)